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| APPLICATION NO.                                 | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/797,459                                      | 03/10/2004  | Jeffrey Gilbert      | GJE-10102/38        | 4461             |
| 25006   | 7590        | 07/31/2006           | EXAMINER            |                  |
| GIFFORD, KRASS, GROH, SPRINKLE & CITKOWSKI, P.C |             |                      | KING, ANITA M       |                  |
| PO BOX 7021                                     |             |                      | ART UNIT            |                  |
| TROY, MI 48007-7021                             |             |                      | PAPER NUMBER        |                  |
|   |             |                      | 3632                |                  |

DATE MAILED: 07/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/797,459

Applicant(s)

GILBERT, JEFFREY

Examiner

Anita M. King

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2 and 4-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2 and 4-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

This is a non-final office action for application number 10/797,459, Lawn Waste Bag Holder, filed on March 10, 2004.

***Response to Amendment***

The examiner hereby respectfully withdraws the finality of the last Office action.

The indicated allowability of claims 10 and 11 is withdrawn in view of the newly discovered reference(s) to Buckley. Rejections based on the newly cited reference(s) follow.

***Cancellation of Claims***

Claims 1 and 3 have been canceled per applicant's request.

***Claim Objections***

Claims 7-9, 14 and 16 are objected to because of the following informalities: in claim 7, line 1, "funnel" should be changed to --support--; in line 1 of claims 8 and 9, "funnel" should be changed to --support frame--; and in claim 14, line 1, "funnel" should be changed to --support--, to be consistent with the limitation cited in line 8 of claim 5, and in claim 16, line 1, "a vertical support top" should be changed to --a top of at least one of said plurality of vertical supports-- and in line 2, "funnel" should be changed to --support--. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3632

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2 and 4-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is an inconsistency between the claimed subject matter and certain portions in the body of the claim relating to functional subject matter, thereby making the scope of the claim unclear. In claim 5 and claim 10 the phrase "a base having dimensions to accommodate a yard waste bag therein," clearly indicates that a subcombination is being claimed. This language would lead the examiner to believe that the applicant intends to claim only the subcombination of "a yard waste bag loading assembly," the yard waste bag being only functionally recited. This presents no problem as long as the body of the claim refers to the subcombination functionally, such as -- said funnel having a mouth that is adapted to be greater than the bag opening size--.

The problem arises when the yard waste bag is positively recited within the body of the claim, such as, "said funnel having a mouth greater than the bag opening size."

Applicant is required to clarify what the claims are intended to be drawn to, i.e., either the yard waste bag loading assembly alone or the combination of the yard waste bag loading assembly and the yard waste bag. Applicant should make the language of the claim consistent with applicant's intent. In formulating a rejection on the merits, the examiner is considering that the claims are drawn to the combination and the claims will be rejected accordingly. If applicant indicates by amendment that the combination claim is the intention, the language in the preamble should be made consistent with the

Art Unit: 3632

language in the body of the claims. If the intent is to claim the subcombination, then the body of the claims must be amended to remove positive recitation of the combination.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,749,158 to Buckley. Buckley discloses a yard waste bag loading assembly (10) comprising: a base (16) having dimensions to accommodate a yard waste bag (25) therein, the yard waste bag having an opening; a plurality of vertical supports (12) extending from the base to a height to accommodate the yard waste bag; a funnel (18) hingeably secured to at least one of the plurality of vertical supports, the funnel having a mouth greater than the bag opening size; wherein the first side is hinged and the funnel is supported on at least one side not adjacent to the first side; and wherein the funnel is supported on both nonadjacent sides adjoining sides adjacent to the first side.

Buckley discloses the claimed invention except for the limitation of the funnel having a hexagonal shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the shape of the funnel in Buckley to have been hexagonal for the purpose of providing an aesthetically, different, structural functional funnel and since such a modification merely involves a change in shape which would not have produced any unexpected results.

***Allowable Subject Matter***

Claim 5 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claims 2, 4, 6-9, and 14-18, as they depend from claim 5 and claims 12 and 13, as they depend from claim 10, would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 110,511 to Swogger

U.S. Patent 999,406 to Skelton

U.S. Patent 3,470,651 to Simmon

U.S. Patent 4,419,232 to Arntyr et al.

U.S. Patent 5,107,564 to Grumbles

U.S. Patent 5,765,614 to Kardosh

U.S. Patent 6,085,647 to Burow

U.S. Patent 7,066,432 to Wood et al.

Swogger, Skelton, and Burow all disclose bag holders having funnels. Simmon discloses a hexagonal shaped funnel. Arntyr et al. and Grumbles both disclose a funnel

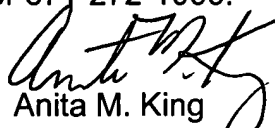
Art Unit: 3632

used with a fabric member. Kardosh discloses a hopper insert for a refuse bag. Wood discloses a refuse bag-supporting device having a tubular frame.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Anita M. King  
Primary Examiner  
Art Unit 3632

July 24, 2006